



Governmental Operations Committee

**Wednesday, February 8, 2006
1:30 – 3:15 PM
Morris Hall**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Governmental Operations Committee

Start Date and Time: Wednesday, February 08, 2006 01:30 pm

End Date and Time: Wednesday, February 08, 2006 03:15 pm

Location: Morris Hall (17 HOB)

Duration: 1.75 hrs

Consideration of the following bill(s):

HB 193 Public Records Exemptions by Bogdanoff

HB 597 Contracting for Efficiency or Conservation Measures by State Agencies by Cannon

Consideration of the following proposed committee bill(s):

PCB GO 06-16 -- OGSR Supplemental Rebate Agreements

PCB GO 06-17 -- OGSR Temporary Cash Assistance

PCB GO 06-18 -- OGSR Long-term Care Services

PCB GO 06-19 -- OGSR Database for Deferred Presentment Providers

PCB GO 06-20 -- OGSR Tobacco Settlement Agreement

PCB GO 06-21 -- OGSR Florida Surplus Lines Service Office

PCB GO 06-24 -- OGSR Alzheimer's Center and Research Institute

NOTICE FINALIZED on 01/27/2006 15:30 by TUCK.SHIRLEY

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 193 Public Records Exemptions
SPONSOR(S): Bogdanoff
TIED BILLS: HB 191 **IDEN./SIM. BILLS:** SB 358

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	6 Y, 0 N	Shaddock	Bond
2) Governmental Operations Committee		Williamson <i>raw</i>	Williamson <i>raw</i>
3) Justice Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

A court monitor is a person appointed by a court in a guardianship case to oversee a guardian. A court monitor may be appointed without notice to the guardian in cases where the court does not want the guardian to be warned of the oversight. Reports filed with the court by a court monitor may contain confidential medical and financial information regarding the ward.

This bill provides that certain court orders appointing a court monitor and discharging a court monitor, and certain reports filed by an appointed court monitor, are confidential and exempt from public disclosure.

This bill does not appear to have a fiscal impact on state or local government.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Current Law

Section 744.107, F.S., allows the court to appoint a monitor “upon inquiry from any interested person” or upon its own motion. The monitor has authority to “investigate, seek information, examine documents, or interview the ward,” and to present a report of such findings to the court.¹ A family member or any other person with an interest in the proceedings may not serve as a monitor.² A monitor may be paid a reasonable fee from the property of the ward, but no state, county, or municipal employee shall be paid a fee for serving as a monitor.³ The orders appointing court monitors and the reports of court monitors are not currently exempt from public disclosure.

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A court monitor is responsible for providing a court with information regarding how well a ward is functioning under the care of a guardian. HB 191 gives a court the authority to take any action necessary to protect a ward depending upon the information presented to the court by a monitor. The bill also gives authority to a court to appoint an emergency court monitor if the ward appears to be in imminent danger of physical or mental harm; the safety of the ward could be seriously impaired; or the ward’s property is in danger of being wasted, misappropriated, or lost unless immediate action is taken. The bill specifies the powers, compensation, and length of service of an emergency court monitor.

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This bill makes the order of any court appointing a monitor pursuant to s. 744.107, F.S., and the required reports submitted by such monitors relating to the medical condition, financial affairs, or mental health of the ward, confidential and exempt from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.⁴ While these reports and orders are confidential⁵, they may be subject to inspection as determined by the court or upon a showing of good cause.

In addition, this bill makes the order of any court appointing a monitor on an emergency basis, pursuant to proposed s. 744.1075, F.S. the reports submitted by such monitors relating to the medical condition, financial affairs, or mental health of the ward, and subsequent court orders finding no probable cause or orders to show cause, confidential and exempt from s. 119.07(1) F.S. and s. 24(a), Art. I of the

¹ Section 744.107, F.S.

² *Id.*

³ *Id.*

⁴ There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. See *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

⁵ Section 744.1076(1)(a)-(b), F.S.

Florida Constitution. These orders and reports, however, may be subject to inspection as determined by the court or upon a showing of good cause.⁶

Additionally, a court determination that no probable cause exists, pursuant to s. 744.107, F.S. or s. 744.1075, F.S. are confidential and exempt from s. 119.07(1) F.S. and s. 24(a), Art. I of the Florida Constitution. However, like the other sections these documents may be subject to inspection as determined by the court or upon a showing of good cause.⁷

C. SECTION DIRECTORY:

Section 1. Creates s. 744.1076, F.S., creating a public records exemption for the order of any court appointing a court monitor, and any order appointing a court monitor on an emergency basis.

Section 2. Provides a statement of public necessity.

Section 3. Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested documents and information, and must examine every requested document or piece of information to determine if a public records exemption prohibits release of the document or information. Passage of any new public records exemption will result in a minimal negative non-recurring fiscal impact, because governments will be required to communicate the new exemption to employees responsible for complying with public records requests. Every public records exemption also represents an unknown negative recurring expense to governments, as each exemption slightly increases the number and complexity of the training and management materials required to be maintained by governments, further complicates the process of complying with public records requests, and increases the chances that a government will be involved

⁶ Section 744.1076(2)(b), F.S.

⁷ Section 744.1076(3), F.S.

in litigation. There is no known reliable method for determining the marginal fiscal impact attributable to a single public records exemption.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that counties and municipalities have to raise revenue.

2. Other:

Article I, s. 24(c), of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public records or public meetings exemption.

Public Records Law

Article I, s. 24(a), of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of the government.

In general, "all court records are presumed open."⁸ Subject to the rulemaking power of the Florida Supreme Court, as provided by art. V, s. 2, of the Florida Constitution, the public shall have access to all records of the judicial branch of government and its agencies, except as otherwise provided.⁹ Various court records are presently deemed confidential by court rule, by Florida Statutes, and by prior case law of the state.¹⁰

The Legislature may provide for the exemption of records from the requirements of Art. I, s. 24, by passage of a general law. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in s. 119.07(1), F.S., which guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995, s. 119.15, F.S., provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet one of the following public purposes: 1) allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2) protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety, although only the individual's identity may be exempted under this provision; or 3) protecting trade or business secrets.

B. RULE-MAKING AUTHORITY:

This bill does not grant rule-making authority to any administrative agency.

⁸ *Times Publishing Co. v. Ake*, 660 So. 2d 255, 257 (Fla. 1995).

⁹ *In re Amendments to Rule of Judicial Administration 2.051—Public Access to Judicial Records*, 651 So. 2d 1185, 1188 (Fla. 1995).

¹⁰ *Id.* at 1189; Rule of Judicial Administration 2.051(c)(9).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

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1 A bill to be entitled

2 An act relating to public records exemptions; creating s.
3 744.1076, F.S.; creating exemptions from public records
4 requirements for certain court records relating to
5 appointment of certain court monitors, reports of such
6 monitors, and determinations and orders of a court
7 relating to findings of no probable cause; providing for
8 future legislative review and repeal; providing findings
9 of public necessity; providing a contingent effective
10 date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 744.1076, Florida Statutes, is created
15 to read:

16 744.1076 Court orders appointing court monitors and
17 emergency court monitors; reports of court monitors; findings of
18 no probable cause; public records exemptions.--

19 (1)(a) The order of any court appointing a court monitor
20 pursuant to s. 744.107 is confidential and exempt from s.
21 119.07(1) and s. 24(a), Art. I of the State Constitution.

22 (b) The reports of an appointed court monitor relating to
23 the medical condition, financial affairs, or mental health of
24 the ward that are required pursuant to s. 744.107 are
25 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
26 of the State Constitution. Such reports may be subject to
27 inspection as determined by the court or upon a showing of good
28 cause.

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29 (c) The public records exemptions provided in this
30 subsection expire if a court makes a finding of probable cause,
31 except that information otherwise made confidential or exempt
32 shall retain its confidential or exempt status.

33 (2)(a) The order of any court appointing a court monitor
34 on an emergency basis pursuant to s. 744.1075 is exempt from s.
35 119.07(1) and s. 24(a), Art. I of the State Constitution.

36 (b) The reports of a court monitor appointed on an
37 emergency basis relating to the medical condition, financial
38 affairs, or mental health of the ward that are required pursuant
39 to s. 744.1075 are confidential and exempt from s. 119.07(1) and
40 s. 24(a), Art. I of the State Constitution. Such reports may be
41 subject to inspection as determined by the court or upon a
42 showing of good cause.

43 (c) The public records exemptions provided in this
44 subsection expire if a court makes a finding of probable cause,
45 except that information otherwise made confidential or exempt
46 shall retain its confidential or exempt status.

47 (3) Court determinations relating to a finding of no
48 probable cause and court orders finding no probable cause
49 pursuant to s. 744.107 or s. 744.1075 are confidential and
50 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
51 Constitution; however, such determinations and findings may be
52 subject to inspection as determined by the court or upon a
53 showing of good cause.

54 (4) This section is subject to the Open Government Sunset
55 Review Act of 1995 in accordance with s. 119.15 and shall stand

56 repealed on October 2, 2011, unless reviewed and saved from
57 repeal through reenactment by the Legislature.

58 Section 2. (1) The Legislature finds that it is a public
59 necessity that the order of any court appointing a court monitor
60 pursuant to s. 744.107, Florida Statutes, or appointing a court
61 monitor on an emergency basis pursuant to s. 744.1075, Florida
62 Statutes, be made exempt from public records requirements. The
63 Legislature finds that the release of the exempt order would
64 produce undue harm to the ward. In many instances, a court
65 monitor is appointed to investigate allegations that may rise to
66 the level of physical neglect or abuse or financial
67 exploitation. When such allegations are involved, if the order
68 of appointment is public, the target of the investigation may be
69 made aware of the investigation before the investigation is even
70 underway, raising the risk of concealment of evidence,
71 intimidation of witnesses, or retaliation against the reporter.
72 The Legislature finds that public disclosure of the exempt order
73 would hinder the ability of the monitor to conduct an accurate
74 investigation if evidence has been concealed and witnesses have
75 been intimidated.

76 (2) The Legislature finds that it is a public necessity
77 that the reports of a court monitor or a court monitor appointed
78 on an emergency basis, relating to the medical condition,
79 financial affairs, or mental health of the ward, be made
80 confidential and exempt from public records requirements. The
81 Legislature finds that the release of the confidential and
82 exempt reports would produce undue harm to the ward. Release of
83 the confidential and exempt reports could hinder the ability of

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84 the monitor to conduct an investigation and interview parties
85 because many parties involved in such an investigation would be
86 reluctant to speak to a court monitor knowing that the
87 information provided would be public. Protecting reports
88 relating to the medical condition, financial affairs, or mental
89 health of a ward would provide an environment in which to
90 discuss information in a free and open way and would allow the
91 court monitor to develop the information needed for reporting
92 purposes. Furthermore, information contained in the reports
93 relating to the medical condition, financial affairs, or mental
94 health of a ward contains sensitive, personal information that,
95 if released, could cause harm or embarrassment to the ward or
96 his or her family.

97 (3) The Legislature finds that it is a public necessity
98 that court determinations relating to a finding of no probable
99 cause and court orders finding no probable cause be made
100 confidential and exempt from public records requirements.
101 Unfounded allegations against a guardian are sometimes made by
102 individuals for unscrupulous reasons. Release of unfounded
103 allegations could be damaging to the reputation of a guardian
104 and could cause undue embarrassment as well as invade the
105 guardian's privacy. If such information were released, it could
106 have a negative impact on the guardian and the ward of that
107 guardian. The guardian program relies heavily on volunteers and,
108 as such, volunteers could be reticent to serve as the guardian
109 of a ward. The release of such information could cause undue
110 harm to a guardian who is the subject of an allegation for which
111 no probable cause has been found.

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112 (4) The public's ability to scrutinize and monitor the
113 actions of the court is not diminished by nondisclosure of the
114 exempt court order and the confidential and exempt reports
115 because the exemptions expire if the court has made a finding of
116 probable cause. In addition, such information could also be made
117 public upon a showing of good cause.

118 Section 3. This act shall take effect on the same date
119 that House Bill 191 or substantially similar legislation takes
120 effect, if such legislation is adopted in the same legislative
121 session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 597
SPONSOR(S): Cannon
TIED BILLS:

Contracting for Efficiency or Conservation Measures by State Agencies

IDEN./SIM. BILLS: SB 278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	_____	Brown <i>PJB</i>	Williamson <i>Lau</i>
2) <u>Water & Natural Resources Committee</u>	_____	_____	_____
3) <u>Fiscal Council</u>	_____	_____	_____
4) <u>State Administration Council</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill adds conservation and efficiency measures for both water and wastewater to the Guaranteed Energy Performance Savings Contracting Act, and adds water and wastewater efficiency and conservation measures to the types of guaranteed performance savings contracts that may be entered into by agencies. The bill expands the express list of conservation measures that may be contemplated

The bill may have a positive fiscal impact on state and local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0597.GO.doc
DATE: 1/27/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

In 1994, the Legislature enacted the Guaranteed Energy Savings Program,¹ later amended to become the Guaranteed Energy Performance Savings Contracting Act.² The program permits agencies, defined as the state, a municipality, or a political subdivision,³ to enter into a guaranteed energy performance savings contract, under specified circumstances.⁴ The current bill expands the scope of the Act beyond energy conservation to include water and wastewater conservation and efficiency.

The purpose of a guaranteed energy savings contract is to allow a properly-licensed contractor to create or install energy conservation measures that will reduce the energy or operating costs of an agency facility. The act contains a number of contract requirements to ensure that the measures will result in a savings to the agency over time, and to ensure that the contractor is financially liable for any failure to achieve such savings.

An “energy conservation measure” is a training program, facility alteration, or equipment purchase to be used in new construction, including an addition to an existing facility, which reduces energy or operating costs.⁵ Examples of such measures include insulation, storm windows and doors, automatic energy control systems, and cogeneration systems. The bill adds the following measures:

- Equipment upgrades that improve the accuracy of billable revenue generating systems.
- Automated electronic or remotely controlled systems or measures that reduce direct personnel costs.
- Such other energy, water, or wastewater efficiency or conservation measures as may provide measurable, long-term operating cost reductions or billable revenue increases.

Current law requires that, before the installation of conservation measures, agencies obtain from the contractor a report that summarizes the costs of the conservation measures and provides the amount of cost savings.⁶ The bill requires the contractor to include in the report a summary of the costs associated with “operational improvements” if such improvements are the basis for the proposed cost savings.

The bill removes the word “energy” from the section heading of s. 489.145, F.S., and changes the short title to the “Guaranteed Performance Savings Contracting Act,” in order to better reflect the additional scope of the act. Similar conforming changes are made throughout the bill. “Water and wastewater” are added to “energy” as the objects of the contracting process, and “efficiency” is added to “conservation” for the types of measures contemplated.

The bill conforms the terminology in s. 287.064, F.S. (addressing the consolidated financing of deferred payment purchases) with the substantive statute by adding “water and wastewater efficiency” to the section.

¹ Ch. 94-112, L.O.F., codified at s. 489.145, F.S.

² Ch. 2001-81, L.O.F.

³ Section 489.145(3)(a), F.S.

⁴ See Section 489.145(4), F.S.

⁵ Section 489.145(3)(b), F.S.

⁶ Section 489.145(4), F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 489.145, F.S., adding "water and wastewater efficiency" to the scope of the re-titled "Guaranteed Performance Savings Contracting Act;" and adding additional measures to those permitted to achieve conservation and efficiency in energy, water, and wastewater use.

Section 2 amends s. 287.064, F.S., adding "water and wastewater efficiency" to the statute addressing consolidated financing of deferred payment purchases.

Section 3 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies that provide energy, water, or wastewater conservation consulting or equipment may have increased business opportunities.

D. FISCAL COMMENTS:

The bill provides an opportunity for agencies to reduce energy, water, and wastewater costs by increasing conservation and efficiency. If the contractor's initial analysis is favorable and conservation measures are installed, the resulting savings are guaranteed by the contractor, pursuant to statute.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

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1 A bill to be entitled
 2 An act relating to contracting for efficiency or
 3 conservation measures by state agencies; amending s.
 4 489.145, F.S.; including water and wastewater efficiency
 5 and conservation in the measures encouraged by the
 6 Legislature; revising definitions; providing for inclusion
 7 of water and wastewater efficiency and conservation
 8 measures in guaranteed performance savings contracts
 9 entered into by a state agency, municipality, or political
 10 subdivision; amending s. 287.064, F.S., relating to
 11 consolidated financing of deferred-payment purchases, to
 12 conform; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 489.145, Florida Statutes, is amended
 17 to read:

18 489.145 Guaranteed ~~energy~~ performance savings
 19 contracting.--

20 (1) SHORT TITLE.--This section may be cited as the
 21 "Guaranteed ~~Energy~~ Performance Savings Contracting Act."

22 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
 23 investment in energy, water, and wastewater efficiency or
 24 conservation measures in agency facilities can reduce the amount
 25 of energy and water consumed and wastewater to be treated and
 26 produce immediate and long-term savings. It is the policy of
 27 this state to encourage each agency ~~agencies~~ to invest in
 28 energy, water, and wastewater efficiency or conservation

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measures that provide such reductions ~~reduce energy consumption~~,
 produce a cost savings for the agency, and, for energy measures,
 improve the quality of indoor air in public facilities and to
 operate, maintain, and, when economically feasible, build or
 renovate existing agency facilities in such a manner as to
 minimize energy and water consumption or wastewater production
 and maximize energy, water, and wastewater savings. It is
 further the policy of this state to encourage agencies to
 reinvest any energy savings resulting from energy, water, and
wastewater efficiency or conservation measures in additional
energy, water, and wastewater efficiency or conservation
measures efforts.

(3) DEFINITIONS.--As used in this section, the term:

(a) "Agency" means the state, a municipality, or a
 political subdivision.

(b) "Energy, water, and wastewater efficiency or
conservation measure" means a training program, facility
 alteration, or equipment purchase to be used in new facilities
or in retrofitting or adding to existing facilities or
infrastructure ~~new construction, including an addition to an~~
~~existing facility~~, which reduces energy, water, wastewater, or
 operating costs and includes, but is not limited to:

1. Insulation of the facility structure and systems within
 the facility.

2. Storm windows and doors, caulking or weatherstripping,
 multiglazed windows and doors, heat-absorbing, or heat-
 reflective, glazed and coated window and door systems,
 additional glazing, reductions in glass area, and other window

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57 and door system modifications that reduce energy consumption.

58 3. Automatic energy control systems.

59 4. Heating, ventilating, or air-conditioning system
60 modifications or replacements.

61 5. Replacement or modifications of lighting fixtures to
62 increase the energy efficiency of the lighting system, which, at
63 a minimum, must conform to the applicable state or local
64 building code.

65 6. Energy recovery systems.

66 7. Cogeneration systems that produce steam or forms of
67 energy such as heat, as well as electricity, for use primarily
68 within a facility or complex of facilities.

69 8. Energy conservation measures that provide long-term
70 operating cost reductions or significantly reduce Btu consumed.

71 9. Renewable energy systems, such as solar, biomass, or
72 wind systems.

73 10. Devices that reduce water consumption or wastewater
74 ~~sewer~~ charges.

75 11. Equipment upgrades that improve the accuracy of
76 billable revenue generating systems.

77 12. Automated electronic or remotely controlled systems or
78 measures that reduce direct personnel costs.

79 13. Such other energy, water, or wastewater efficiency or
80 conservation measures as may provide measurable operating cost
81 reductions or billable revenue increases.

82 14.11. Energy storage systems, such as fuel cells and
83 thermal storage.

84 15.12. Energy generating technologies, such as

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85 microturbines.

86 ~~16.13-~~ Any other repair, replacement, or upgrade of
87 existing equipment.

88 (c) "Energy, water, and wastewater cost savings" means a
89 measured reduction in the cost of fuel, energy or water
90 consumption, or wastewater production, and stipulated
91 improvement in the operation and maintenance created from the
92 implementation of one or more energy, water, and wastewater
93 efficiency or conservation measures when compared with an
94 established baseline for the previous cost of fuel, energy, or
95 water consumption, or wastewater production, and stipulated
96 operation and maintenance.

97 (d) "Guaranteed ~~energy~~ performance savings contract" means
98 a contract for the evaluation, recommendation, and
99 implementation of energy, water, and wastewater efficiency or
100 conservation measures, which, at a minimum, shall include:

101 1. The design and installation of equipment to implement
102 one or more of such measures and, if applicable, operation and
103 maintenance of such measures.

104 2. The amount of any actual annual savings that meet or
105 exceed total annual contract payments made by the agency for the
106 contract.

107 3. The finance charges incurred by the agency over the
108 life of the contract.

109 (e) "Guaranteed ~~energy~~ performance savings contractor"
110 means a person or business that is licensed under chapter 471,
111 chapter 481, or this chapter, and is experienced in the
112 analysis, design, implementation, or installation of energy,

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113 water, or wastewater efficiency or conservation measures through
114 energy performance contracts.

115 (4) PROCEDURES.--

116 (a) An agency may enter into a guaranteed energy
117 performance savings contract with a guaranteed energy
118 performance savings contractor to significantly reduce energy,
119 water, or wastewater or operating costs of an agency facility
120 through one or more energy, water, and wastewater efficiency or
121 conservation measures.

122 (b) Before design and installation of energy, water, and
123 wastewater efficiency and conservation measures, the agency must
124 obtain from a guaranteed energy performance savings contractor a
125 report that summarizes the costs associated with the energy
126 ~~conservation~~ measures and provides an estimate of the amount of
127 the associated energy cost savings or operational improvements.
128 The agency and the guaranteed energy performance savings
129 contractor may enter into a separate agreement to pay for costs
130 associated with the preparation and delivery of the report;
131 however, payment to the contractor shall be contingent upon the
132 report's projection of energy cost savings being equal to or
133 greater than the total projected costs of the design and
134 installation of the report's energy conservation or efficiency
135 measures.

136 (c) The agency may enter into a guaranteed energy
137 performance savings contract with a guaranteed energy
138 performance savings contractor if the agency finds that the
139 amount the agency would spend on the energy conservation or
140 efficiency measures will not likely exceed the amount of the

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141 associated energy cost savings for up to 20 years from the date
142 of installation, based on the life cycle cost calculations
143 provided in s. 255.255, if the recommendations in the report
144 were followed and if the qualified provider or providers give a
145 written guarantee that such ~~the energy~~ cost savings will meet or
146 exceed the costs of the system. The contract may provide for
147 installment payments for a period not to exceed 20 years.

148 (d) A guaranteed ~~energy~~ performance savings contractor
149 must be selected in compliance with s. 287.055; except that if
150 fewer than three firms are qualified to perform the required
151 services, the requirement for agency selection of three firms,
152 as provided in s. 287.055(4)(b), and the bid requirements of s.
153 287.057 do not apply.

154 (e) Before entering into a guaranteed ~~energy~~ performance
155 savings contract, an agency must provide published notice of the
156 meeting in which it proposes to award the contract, the names of
157 the parties to the proposed contract, and the contract's
158 purpose.

159 (f) A guaranteed ~~energy~~ performance savings contract may
160 provide for financing, including tax exempt financing, by a
161 third party. The contract for third party financing may be
162 separate from the ~~energy~~ performance savings contract. A
163 separate contract for third party financing must include a
164 provision that the third party financier must not be granted
165 rights or privileges that exceed the rights and privileges
166 available to the guaranteed ~~energy~~ performance savings
167 contractor.

168 (g) In determining the amount the agency will finance to

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169 acquire the efficiency or ~~energy~~ conservation measures, the
170 agency may reduce such amount by the application of any grant
171 moneys, rebates, or capital funding available to the agency for
172 the purpose of buying down the cost of the guaranteed ~~energy~~
173 performance savings contract. However, in calculating the life
174 cycle cost as required in paragraph (c), the agency shall not
175 apply any grants, rebates, or capital funding.

176 (5) CONTRACT PROVISIONS.--

177 (a) A guaranteed ~~energy~~ performance savings contract must
178 include a written guarantee that may include, but is not limited
179 to the form of, a letter of credit, insurance policy, or
180 corporate guarantee by the guaranteed ~~energy~~ performance savings
181 contractor that annual associated ~~energy~~ cost savings will meet
182 or exceed the amortized cost of the efficiency and ~~energy~~
183 conservation measures.

184 (b) The guaranteed ~~energy~~ performance savings contract
185 must provide that all payments, except obligations on
186 termination of the contract before its expiration, may be made
187 over time, but not to exceed 20 years from the date of complete
188 installation and acceptance by the agency, and that the annual
189 savings are guaranteed to the extent necessary to make annual
190 payments to satisfy the guaranteed ~~energy~~ performance savings
191 contract.

192 (c) The guaranteed ~~energy~~ performance savings contract
193 must require that the guaranteed ~~energy~~ performance savings
194 contractor to whom the contract is awarded provide a 100-percent
195 public construction bond to the agency for its faithful
196 performance, as required by s. 255.05.

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197 (d) The guaranteed ~~energy~~ performance savings contract may
198 contain a provision allocating to the parties to the contract
199 any annual associated ~~energy~~ cost savings that exceed the amount
200 of the associated ~~energy~~ cost savings guaranteed in the
201 contract.

202 (e) The guaranteed ~~energy~~ performance savings contract
203 shall require the guaranteed ~~energy~~ performance savings
204 contractor to provide to the agency an annual reconciliation of
205 the guaranteed associated ~~energy~~ cost savings. If the
206 reconciliation reveals a shortfall in such annual ~~energy~~ cost
207 savings, the guaranteed ~~energy~~ performance savings contractor is
208 liable for such shortfall. If the reconciliation reveals an
209 excess in such annual ~~energy~~ cost savings, the excess savings
210 may be allocated under paragraph (d) but may not be used to
211 cover potential ~~energy~~ cost savings shortages in subsequent
212 contract years.

213 (f) The guaranteed ~~energy~~ performance savings contract
214 must provide for payments of not less than one-twentieth of the
215 price to be paid within 2 years from the date of the complete
216 installation and acceptance by the agency, and the remaining
217 costs to be paid at least quarterly, not to exceed a 20-year
218 term, based on life cycle cost calculations.

219 (g) The guaranteed ~~energy~~ performance savings contract may
220 extend beyond the fiscal year in which it becomes effective;
221 however, the term of any contract expires at the end of each
222 fiscal year and may be automatically renewed annually for up to
223 20 years, subject to the agency making sufficient annual
224 appropriations based upon continued realized energy, water, or

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225 wastewater savings.

226 (h) The guaranteed ~~energy~~ performance savings contract
227 must stipulate that it does not constitute a debt, liability, or
228 obligation of the state.

229 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
230 Department of Management Services, with the assistance of the
231 Office of the Chief Financial Officer, may, within available
232 resources, provide technical assistance to state agencies
233 contracting for energy, water, and wastewater efficiency or
234 conservation measures and engage in other activities considered
235 appropriate by the department for promoting and facilitating
236 guaranteed ~~energy~~ performance contracting by state agencies. The
237 Office of the Chief Financial Officer, with the assistance of
238 the Department of Management Services, may, within available
239 resources, develop model contractual and related documents for
240 use by state agencies. Prior to entering into a guaranteed
241 ~~energy~~ performance savings contract, any contract or lease for
242 third-party financing, or any combination of such contracts, a
243 state agency shall submit such proposed contract or lease to the
244 Office of the Chief Financial Officer for review and approval.

245 Section 2. Subsection (10) of section 287.064, Florida
246 Statutes, is amended to read:

247 287.064 Consolidated financing of deferred-payment
248 purchases.--

249 (10) Costs incurred pursuant to a guaranteed ~~energy~~
250 performance savings contract, including the cost of energy,
251 water, and wastewater efficiency and conservation measures, each
252 as defined in s. 489.145, may be financed pursuant to a master

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253 | equipment financing agreement; however, the costs of training,
254 | operation, and maintenance may not be financed. The period of
255 | time for repayment of the funds drawn pursuant to the master
256 | equipment financing agreement under this subsection may exceed 5
257 | years but may not exceed 10 years.

258 | Section 3. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 0597

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Governmental Operations
Committee
Representative Cannon offered the following:

Amendment

Remove line 86 and insert:

16. Cool roof coating.

17.13. Any other repair, replacement, or upgrade of

000000

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-16 OGSR Supplemental Rebate Agreements
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 516

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Williamson <i>Raw</i>	Williamson <i>Raw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts and narrows the public records exemption relating to supplemental rebate agreements by removing the exemption for trade secrets. It reenacts the public meetings exemption for the Medicaid Pharmaceutical and Therapeutics Committee. The bill also requires that a record be made of each portion of an exempt meeting. The exemptions will repeal on October 2, 2006, if this bill does not become law.

This bill may have a fiscal impact on state government. It does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill narrows the public records exemption thereby increasing public access to government information. The bill requires the Medicaid Pharmaceutical and Therapeutics Committee to make a record of each portion of an exempt meeting.

B. EFFECT OF PROPOSED CHANGES:

Background

The 2001 Florida Legislature significantly expanded its efforts to control pharmaceutical costs in the state's Medicaid program by enacting a program called the preferred drug list (PDL).¹ Under this law, Medicaid prescribing practitioners are required to prescribe the medications on the PDL, or must obtain prior authorization from the Agency for Health Care Administration (AHCA) to prescribe a medication not on the PDL, in order for Medicaid to pay for the prescription.

In order for a drug manufacturer to have its medications considered for inclusion on the PDL, it must agree to provide the state both federally mandated rebates and state-mandated supplemental rebates. Since rebate negotiations involve disclosure by pharmaceutical manufacturers of proprietary information regarding the elements of their wholesale pricing, federal law prohibits disclosure of information received by Medicaid agencies from manufacturers that discloses identities of manufacturers or wholesalers or the prices charged by these manufacturers or wholesalers.² The federal prohibition applies to the U.S. Secretary of the Department of Health and Human Services, the U.S. Secretary of Veterans Affairs, or a state agency or contractor.

To address the federal confidentiality requirements and to ensure the use of this pricing information for negotiating state supplemental rebate agreements, the 2001 Legislature enacted a public records and public meetings exemption related to rebate negotiations.³ Trade secrets, rebate amount, percent of rebate, manufacturer's pricing, and supplemental rebates with respect to supplemental rebate negotiations are confidential and exempt⁴ from public records requirements.

Current law also provides a public meetings exemption applicable in limited circumstances. Portions of meetings of the Medicaid Pharmaceutical and Therapeutics Committee are exempt from public meetings requirements if the aforementioned confidential and exempt records are discussed.⁵

Pursuant to the Open Government Sunset Review Act,⁶ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.⁷ House staff reviewed the public records and public meetings exemption pursuant to the Open Government Sunset Review Act and determined that, with modification, the exemption meets the requirements for reenactment.⁸ Based on AHCA's survey response, staff concluded that the public records exemption for trade secrets was unnecessary

¹ Chapter 2001-104, L.O.F.

² 42 U.S.C. 1396r 8

³ Chapter 2001 216, L.O.F.; codified in s. 409.91196, F.S.

⁴ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁵ Section 409.91196(2), F.S.

⁶ Section 119.15, F.S.

⁷ Section 409.91196(3), F.S.

⁸ Staff surveyed and interviewed AHCA staff.

because AHCA stated that rebate agreements and supplemental rebate amounts were trade secrets for purposes of the exemption. Such information is protected under the current public records exemption.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records and public meetings exemption. It narrows the exemption by removing the public records exemption for trade secrets.

The bill requires the Medicaid Pharmaceutical and Therapeutics Committee, which is created within AHCA,⁹ to make a record of each portion of an exempt meeting. The record must include the time of commencement and termination, all discussions and proceedings, the names of all persons present at any time, and the names of all persons speaking. The record of the exempt portion of a meeting is a public record; however, the rebate amount, percent of rebate, manufacturer's pricing, and supplemental rebate included in the record is confidential and exempt from public disclosure because of the public records exemption already provided to AHCA.¹⁰

Finally, the bill makes editorial changes.

C. SECTION DIRECTORY:

Section 1 amends s. 409.91196, F.S., to remove the repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires the Medicaid Pharmaceutical and Therapeutics Committee, which is a part of AHCA, to maintain a record of exempt portions of meetings. This could create a negative fiscal impact; however, the committee already hires a court report to keep a record of the open portion of the meeting. As such, additional expenditures should be avoided.

⁹ Section 409.91195, F.S.

¹⁰ See s. 409.91196(1), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding supplemental rebate
agreements; amending s. 409.91196, F.S.; making editorial
changes; removing superfluous language; requiring that a
record of exempt meetings be made and maintained;
eliminating the scheduled repeal of the exemptions;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 409.91196, Florida Statutes, is amended
to read:

409.91196 Supplemental rebate agreements; public
~~confidentiality of records and public meetings exemption.~~--

(1) ~~The Trade secrets,~~ rebate amount, percent of rebate,
manufacturer's pricing, and supplemental rebate held by rebates
~~which are contained in records of the Agency for Health Care~~
~~Administration under s. 409.912(39)(a)7. and its agents with~~
~~respect to supplemental rebate negotiations and which are~~
~~prepared pursuant to a supplemental rebate agreement under s.~~
~~409.912(40)(a)7.~~ are confidential and exempt from s. 119.07(1) ~~s.~~
~~119.07~~ and s. 24(a), Art. I of the State Constitution.

(2) That portion of a meeting ~~Those portions of meetings~~
of the Medicaid Pharmaceutical and Therapeutics Committee at
which the trade secrets, rebate amount, percent of rebate,
manufacturer's pricing, and supplemental rebate rebates are
discussed is disclosed for discussion or negotiation of a
~~supplemental rebate agreement under s. 409.912(40)(a)7. are~~

BILL

ORIGINAL

YEAR

exempt from s. 286.011 and s. 24(b), Art. I of the State
 Constitution. A record shall be made of each portion of an exempt
 meeting. Such record must include the times of commencement and
 termination, all discussions and proceedings, the names of all
 persons present at any time, and the names of all persons
 speaking. No exempt portion of a meeting may be held off the
 record.

~~(3) Subsections (1) and (2) are subject to the Open
 Government Sunset Review Act of 1995 in accordance with s.
 119.15, and shall stand repealed on October 2, 2006, unless
 reviewed and saved from repeal through reenactment by the
 Legislature.~~

Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-17 OGSR Temporary Cash Assistance
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Brazzell/Williamson	Williamson <i>haw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts and narrows the public records exemption for information that identifies a temporary cash assistance program participant, a participant's family, or a participant's family or household member. It reenacts the public meetings exemption for those portions of meetings at which such information is discussed. The exemptions will repeal on October 2, 2006, if this bill does not become law.

This bill may have a minimal non-recurring positive fiscal impact on state government. It does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill narrows the public records exemption thereby increasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

Background

The state receives federal funding under the Temporary Assistance to Needy Families (TANF) block grant program. The state may use the funds for employment and training activities, supportive services, and benefits that will enable clients to get a job, keep a job, and improve their economic circumstances.¹ Chapter 414, F.S., authorizes the use of such funds to provide temporary cash assistance to certain eligible families. Temporary cash assistance payments meet the definition of “assistance” under federal law and, thus, subject the state to federal requirements to “restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government.”² As such, the 2001 Legislature created public records and public meetings exemptions to protect the identity of a person receiving temporary cash assistance.³

Information that identifies a temporary cash assistance program participant, a participant’s family, or a participant’s family or household member is confidential and exempt⁴ from public records requirements.⁵ The exemption does not apply to information identifying a noncustodial parent. The custodians of such information include the Department of Children and Family Services, the Agency for Workforce Innovation, Workforce Florida, Inc., the Department of Management Services, the Department of Health, the Department of Revenue, the Department of Education, and a regional workforce board or local committee.

Such information may be released for purposes including:

- The administration of the temporary assistance for needy families plan under Title IV-A of the Social Security Act;
- The administration of the state’s plan;
- Any investigation or prosecution or any criminal, civil, or administrative proceeding conducted in connection with the administration of the temporary assistance for needy families plan or the state’s plan;
- The administration of any other state, federal, or federally assisted program that provides assistance or services on the basis of need;
- An audit conducted in connection with the administration of the federal or state plan;
- The administration of the unemployment compensation program;

¹ Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance. *Helping Families Achieve Self-Sufficiency: A Guide on Funding Services for Children and Families through the TANF Program*, p. 4. <http://www.acf.dhhs.gov/programs/ofa/funds2.htm>.

² 42 USC s. 602(a)(1)(iv).

³ Chapter 2001-160, L.O.F.; codified as ss. 414.295, 414.106, and 445.007(9), F.S.

⁴ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁵ Section 414.295(1), F.S.

- The reporting of abuse to the appropriate agency; or
- The administration of services to elderly persons.⁶

If a subpoena is received for such information, then the information must be submitted to the court for an inspection in camera. The receiving entities must maintain the confidential and exempt status of the information.⁷ This provision is superfluous because the court already has the authority to require an inspection in camera and to require the receiving parties to maintain the confidential and exempt status of the information.

Current law provides two public meetings exemptions for any portion of a meeting held by the Department of Children and Family Services, Workforce Florida, Inc., or a regional workforce board or local committee at which such information is discussed.⁸ These public meetings exemptions are nearly identical in their substance except that one exemption lists the Department of Children and Family Services⁹ while the other does not.¹⁰

Pursuant to the Open Government Sunset Review Act,¹¹ the public records and public meetings exemptions will repeal on October 2, 2006, unless reenacted by the Legislature. House staff reviewed the public records and public meetings exemptions pursuant to the Open Government Sunset Review Act and determined that, with modification, the exemptions meet the requirements for reenactment.¹² Staff concluded that the public records exemption should be narrowed to exclude the Department of Management Services (DMS) as a custodian of such information because DMS, in its survey response, indicated that it neither maintains nor shares the protected information.

The public records exemption should be amended further to authorize access to such confidential and exempt information by school districts and the Department of Military Affairs (DMA). In its survey response, the Department of Education indicated that school districts share information with the Department of Children and Family Services (DCFS) through the Learnfare program.¹³ The program is designed to curtail truancy and requires school districts to share with DCFS the names of truant students who are temporary cash assistance recipients. In turn, DCFS reduces the amount of benefits the truant students receive. DCFS also shares with DMA the names of children who receive temporary cash assistance for its Forward March and About Face programs. Both programs provide academic and extracurricular enrichment to children who are recipients.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records and public meetings exemptions regarding temporary cash assistance participants. It also makes editorial changes.

The bill narrows the exemption by removing the Department of Management Services from the list of records custodians. It further narrows the exemption by authorizing access to the confidential and exempt information by school districts and the DMA.

The bill removes the provision authorizing a person to subpoena such information and allowing the court to provide for an inspection in camera. The court already has the authority to issue a subpoena and provide for such inspection.

The bill removes the duplicative public meetings exemption found in s. 445.007, F.S., because it is duplicative of the public meetings exemption provided in s. 414.106, F.S.

⁶ Paragraphs (a) – (h) of s. 414.295, F.S.

⁷ Section 414.295(2), F.S.

⁸ Sections 414.106 and 445.007(9), F.S.

⁹ Section 414.106, F.S.

¹⁰ Section 445.007(9), F.S.

¹¹ Section 119.15, F.S.

¹² Staff surveyed affected agencies.

¹³ The program is outlined in s. 414.1251, F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 414.106, F.S., to remove the repeal date.

Section 2 amends s. 414.295, F.S., to remove the repeal date.

Section 3 amends s. 445.007, F.S., to remove a duplicative public meetings exemption.

Section 4 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS.

D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state and regional workforce board expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, the state and regional workforce boards may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding temporary cash assistance;
4 amending s. 414.106, F.S.; making editorial changes;
5 eliminating the scheduled repeal of the public meetings
6 exemption; amending s. 414.295, F.S.; narrowing the public
7 records exemption; making editorial changes; removing
8 superfluous language; eliminating the scheduled repeal of
9 the public records exemption; amending s. 445.007, F.S.;
10 removing the public meetings exemption for meetings held
11 by Workforce Florida, Inc., or a regional workforce board
12 or local committee for discussions regarding temporary
13 cash assistance participants; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 414.106, Florida Statutes, is amended to
18 read:

19 414.106 Exemption from public meetings law.--That ~~Any~~
20 ~~meeting or~~ portion of a meeting held by the department, Workforce
21 Florida, Inc., or a regional workforce board or local committee
22 created pursuant to s. 445.007 at which personal identifying
23 information contained in records relating to temporary cash
24 assistance is discussed is exempt from s. 286.011 and s. 24(b),
25 Art. I of the State Constitution if the information identifies a
26 participant, a participant's family, or a participant's family or
27 household member. ~~This section is subject to the Open Government~~
28 ~~Sunset Review Act of 1995 in accordance with s. 119.15, and shall~~

BILL

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~~stand repealed on October 2, 2006, unless reviewed and saved from
repeal through reenactment by the Legislature.~~

Section 2. Section 414.295, Florida Statutes, is amended to
read:

414.295 Temporary cash assistance programs; public records
exemption.--

(1) Personal identifying information of a ~~contained in
records relating to temporary cash assistance program which
identifies a participant, a participant's family, or a
participant's family or household member, except for information
identifying a noncustodial parent, and which is held by the
department, the Agency for Workforce Innovation, Workforce
Florida, Inc., the Department of Management Services, the
Department of Health, the Department of Revenue, the Department
of Education, or a regional workforce board or local committee
created pursuant to s. 445.007, or service providers under
contract with any of these entities shall be held~~ is confidential
and exempt from ~~the requirements of s. 119.07(1) and s. 24(a),
Art. I of the State Constitution. Such information made~~
confidential and exempt information may be released for purposes
directly connected with:

(a) The administration of the temporary assistance for
needy families plan under Title IV-A of the Social Security Act,
as amended, by ~~which may include disclosure of information
within and among the department, the Agency for Workforce
Innovation, Workforce Florida, Inc., the Department of Military
Affairs Management Services, the Department of Health, the
Department of Revenue, the Department of Education, a regional
workforce board or local committee created pursuant to s.~~

BILL

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YEAR

445.007, or a school district ~~service providers under contract~~
~~with any of these entities.~~

(b) The administration of the state's plan or program approved under Title IV-B, Title IV-D, or Title IV-E of the Social Security Act, as amended, or under Title I, Title X, Title XIV, Title XVI, Title XIX, Title XX, or Title XXI of the Social Security Act, as amended.

(c) Any investigation, prosecution, or any criminal, civil, or administrative proceeding conducted in connection with the administration of any of the plans or programs specified in paragraph (a) or paragraph (b) by. ~~Such information shall be disclosed to~~ a federal, state, or local governmental entity, upon request by that entity, when such request is made pursuant to the proper exercise of that entity's duties and responsibilities.

(d) The administration of any other state, federal, or federally assisted program that provides assistance or services on the basis of need, in cash or in kind, directly to a participant.

(e) Any audit or similar activity, such as a review of expenditure reports or financial review, conducted in connection with the administration of any of the plans or programs specified in paragraph (a) or paragraph (b) by a governmental entity authorized by law to conduct such audit or activity.

(f) The administration of the unemployment compensation program.

(g) The reporting to the appropriate agency or official of information about known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child or elderly person receiving

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assistance, if circumstances indicate that the health or welfare of the child or elderly person is threatened.

(h) The administration of services to elderly persons under ss. 430.601-430.606.

~~(2) If a subpoena is received for any information made confidential and exempt by this section, the public record or part thereof in question shall be submitted to the court for an inspection in camera. The court may make such provision as it finds necessary to maintain appropriate confidentiality. Except pursuant to court order, the receiving entities shall retain the confidential and exempt status of such personal identifying information as otherwise provided for in this section.~~

~~(3)~~ If information is obtained from a participant through an integrated eligibility process so that the requirements of more than one state or federal program apply to the information, the requirements of the program that is the provider of the information shall prevail. If the department cannot determine which program is the provider of the information, the requirements of each applicable state or federal program shall be met.

~~(4) This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 3. Subsection (9) of section 445.007, Florida Statutes, is amended to read:

445.007 Regional workforce boards; ~~exemption from public meetings law.--~~

BILL

ORIGINAL

YEAR

115 ~~(9) Any meeting or portion of a meeting held by Workforce~~
 116 ~~Florida, Inc., or a regional workforce board or local committee~~
 117 ~~created under this section at which personal identifying~~
 118 ~~information contained in records relating to temporary cash~~
 119 ~~assistance, as defined in s. 414.0252, is discussed is exempt~~
 120 ~~from s. 286.011 and s. 24(b), Art. I of the State Constitution if~~
 121 ~~the information identifies a participant, a participant's family,~~
 122 ~~or a participant's family or household member, as defined in s.~~
 123 ~~414.0252. This subsection is subject to the Open Government~~
 124 ~~Sunset Review Act of 1995 in accordance with s. 119.15, and shall~~
 125 ~~stand repealed on October 2, 2006, unless reviewed and saved from~~
 126 ~~repeal through reenactment by the Legislature.~~

127 Section 4. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-18 OGSR Long-term Care Services
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Brazzell/Williamson	Williamson <i>haw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for personal identifying information that relates to an individual's health or eligibility or receipt of health-related, elder care, or long-term care services. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb18.GO.doc
DATE: 1/31/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

The Department of Elderly Affairs (DOEA) is tasked with a variety of responsibilities, including serving as the primary state agency responsible for administering human services programs for the elderly¹ and promoting the maintenance and improvement of the physical well-being and mental health of elderly persons.² To accomplish these purposes, the DOEA offers a variety of services. Some services first require an individual to submit personal information regarding his or her identity, physical health, and financial resources in order to determine eligibility and to arrange for receipt of services.³

In 2001, the Legislature enacted s. 430.105, F.S., which consolidated a number of the DOEA's public records exemptions. Personal identifying information relating to an individual's health or eligibility for or receipt of health-related, elder care or long-term care services is confidential and exempt⁴ from public records requirements. Such information may not be disclosed publicly unless the affected client or elder person or his or her legal representative provides written consent. Pursuant to the Open Government Sunset Review Act,⁵ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes and removes superfluous language.

C. SECTION DIRECTORY:

Section 1 amends s. 430.105, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

¹ Section 430.03(1), F.S.

² Section 430.03(11), F.S.

³ For example, the DOEA states its nursing home pre-admission screening program involves medical and functional assessments of potential clients.

⁴ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁵ Section 119.15, F.S.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding long-term care services;
4 amending s. 430.105, F.S.; making editorial changes;
5 removing superfluous language; eliminating the scheduled
6 repeal of the exemption; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Section 430.105, Florida Statutes, is amended to
11 read:

12 430.105 Confidentiality of information.--

13 ~~(1)~~ Personal identifying information in a record which
14 relates ~~relating~~ to an individual's health or eligibility for or
15 receipt of health-related, elder care, or long-term care services
16 which is held by the department ~~received as a result of services~~
17 ~~rendered under any program administered or funded by the~~
18 ~~department~~ is confidential and exempt from the provisions of s.
19 119.07(1) and s. 24(a), Art. I of the State Constitution, ~~except~~
20 ~~as otherwise provided by law. Such information may be contained~~
21 ~~in records created by or received by the department or its~~
22 ~~service providers or obtained through files, reports,~~
23 ~~inspections, or otherwise by employees of the department, persons~~
24 ~~who volunteer services through programs administered by the~~
25 ~~department or its contract providers, or by contract providers.~~
26 Such information made confidential and exempt from the public
27 records law under this section may not be disclosed:

28 (1) To another governmental entity for the purpose of
29 administering the department's programs for the elderly; or

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(2) If ~~publicly unless~~ the affected individual client ~~or~~
elder person or his or her legal representative provides written
consent.

~~(2) This section is subject to the Open Government Sunset
Review Act of 1995, in accordance with s. 119.15, and shall stand
repealed on October 2, 2006, unless reviewed and saved from
repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-19 **OGSR Database for Deferred Presentment Providers**
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1584

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Williamson <i>haw</i>	Williamson <i>haw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for personal identifying information contained in the database for deferred presentment providers. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb19.GO.doc
DATE: 1/31/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

The Deferred Presentment Act,¹ which was enacted in 2001, provides requirements that apply to check cashing operations. Any person engaged in a deferred presentment transaction (deferred presentment provider²) must register with the Office of Financial Regulation (OFR) and is subject to its regulation.³

The maximum face amount of a check taken for deferred presentment cannot exceed \$500, excluding allowable fees.⁴ The maximum fee is 10 percent of the face amount, plus a maximum \$5.00 verification fee.⁵ Upon receipt of the customer's (drawer⁶) check, the deferred presentment provider must immediately provide the drawer with the amount of the check, minus the allowable fees. The deferred presentment agreement may not be for a term in excess of 31 days or less than seven days.⁷ The provider cannot renew or extend any transaction (rollover) or hold more than one outstanding check for any one drawer at any one time.⁸

A deferred presentment provider cannot enter into a transaction with a person who has an outstanding transaction with any other provider, or with a person whose previous transaction with any provider was terminated for less than 24 hours.⁹ To verify such information, the provider must access a database established by OFR¹⁰ and must submit the following data on each transaction:

- Drawer's name, address, and drivers' license number;
- Drawer's social security or employment authorization alien registration number;
- Drawer's date of birth;
- Amount and date of the transaction;
- Date the transaction is closed; and
- Check number.¹¹

Current law provides a public records exemption for identifying information contained in the database. A deferred presentment provider may access such information in order to verify whether any

¹ Part IV of chapter 560, F.S.

² Deferred presentment providers are more commonly known as "pay-day lenders." Deferred presentment providers are businesses that charge a fee for cashing a customer's check and agreeing to hold that check for a certain number of days prior to depositing or redeeming the check. Section 560.402(6), F.S.

³ Section 560.403, F.S.

⁴ Section 560.404(5), F.S.

⁵ Section 560.404(6), F.S. The maximum \$5.00 verification fee is established by Rule 69V-560.801, Fla. Admin. Code, as authorized by s. 560.309(4), F.S.

⁶ A drawer is a person who writes a personal check and upon whose account the check is drawn. Section 560.402(7), F.S.

⁷ Section 560.404(8), F.S.

⁸ Section 560.404(18), F.S.

⁹ Section 560.404(19), F.S.

¹⁰ OFR is required to establish this database of all deferred presentment transactions in the state and give providers real-time access through an Internet connection. OFR contracts with a private vendor, Veritec Solutions, Inc., to maintain the database. Senate Staff Analysis and Economic Impact Statement for S 7072, prepared by Banking and Insurance Committee, January 26, 2006, at 4.

¹¹ Section 560.404(23), F.S. All of the information is required by statute, except the drawer's date of birth and check number.

Telephone conversation with staff of OFR, January 27, 2006.

transactions are outstanding for a particular person. Pursuant to the Open Government Sunset Review Act,¹² the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.¹³

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also clarifies that the public records exemption applies to information contained in the database that identifies a drawer or a deferred presentment provider. The bill also makes editorial changes.

C. SECTION DIRECTORY:

Section 1 amends s. 560.4041, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹² Section 119.15, F.S.

¹³ Section 560.4041, F.S.

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding deferred presentment
4 providers; amending s. 560.4041, F.S.; making clarifying
5 changes; making editorial changes; removing superfluous
6 language; deleting the provision that provides for the
7 repeal of the exemption under the Open Government Sunset
8 Review Act; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 560.4041, Florida Statutes, is amended
13 to read:

14 560.4041 Database for deferred presentment providers;
15 public records exemption. ~~The identifying Information which~~
16 identifies a drawer or a deferred presentment provider contained
17 in the database for deferred presentment providers, which is
18 authorized under s. 560.404, is confidential and exempt from s.
19 119.07(1), and s. 24(a), Art. I of the State Constitution. A
20 deferred presentment provider may access information that it has
21 entered into the database and may obtain an eligibility
22 determination for a particular drawer based on information in the
23 database. , except that the identifying information in the
24 database may be accessed by deferred presentment providers to
25 verify whether any deferred presentment transactions are
26 outstanding for a particular person and by the office for the
27 purpose of maintaining the database. This section is subject to
28 the Open Government Sunset Review Act of 1995 in accordance with
29 s. 119.15, and shall stand repealed October 2, 2006, unless

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30 | ~~reviewed and saved from repeal through reenactment by the~~
 31 | ~~Legislature.~~
 32 | Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-20 OGSR Tobacco Settlement Agreement
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1530

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Williamson <i>Raw</i>	Williamson <i>Raw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for proprietary confidential business information used to calculate the annual tobacco-settlement payments. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

In February 1995, the State of Florida filed suit against a number of tobacco manufacturers asserting various claims for monetary and injunctive relief.¹ On March 3, 1996, the State of Florida, as one of five settling states,² settled all of its claims against Liggett Group, Inc., Brooke Group, Ltd., and Liggett & Myers, Inc. In August 1997, the "Big Four" tobacco companies (Phillip Morris, Inc., R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corp., and Lorillard Tobacco Company) entered into a \$368.5 billion tobacco settlement agreement with Florida for all past, present, and future claims by the state, including reimbursement of Medicaid expenses, fraud, RICO,³ and punitive damages. Current law defines these settlements to mean the settlement, as amended, in the case of *State v. American Tobacco Co. et al.*, No. 95-1466AH (Fla. 15th Cir. Ct. 1996).⁴

The settling tobacco companies must make settlement payments to Florida in perpetuity.⁵ The annual tobacco settlement payments are based on several factors that include the total volume of U.S. cigarette sales, each company's share of the national market, net operating profits, and consumer price indices. Statutory guidelines were established to govern the expenditure of the tobacco settlement proceeds.⁶

In 2000, the Legislature established the Task Force on Tobacco-Settlement Revenue Protection to determine the need for, and to evaluate methods for, protecting the state's settlement revenue from significant loss.⁷ The task force recommended that the Legislature provide a process for verifying that the tobacco settlement payments received are in accordance with the Florida Settlement Agreement. The report further recommended that the Legislature provide a public records exemption for information considered necessary to verify the accuracy of the payments made by the tobacco companies if such information is a trade secret or insider information.⁸

As a result, the Legislature enacted a public records exemption for information used to calculate the annual tobacco-settlement payments.⁹ Proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for

¹ The lawsuit included as defendants the American Tobacco Company, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Company, Philip Morris, Inc., Liggett Group, Inc. Brooke Group, Ltd., Lorillard Company, British American Tobacco Co., Ltd., and Dosal Tobacco Corp, Inc.

² The five states that entered into the settlement agreement are West Virginia, Florida, Mississippi, Massachusetts, and Louisiana.

³ "Florida Racketeer Influenced and Corrupt Organization Act" in ss. 895.01-895.06, F.S.

⁴ See ss. 215.56005(1)(f) and 569.215, F.S.

⁵ From the date of the settlement, Florida was to receive \$11.3 billion over the next 25 years and an additional \$1.7 billion over the next five years because of a most favored nation clause in the settlement agreement, as amended. Florida negotiated a "Most Favored Nations" clause in the settlement, which provides the state with additional monies for a period, after Minnesota settled with the defendants on terms more favorable than Florida's.

⁶ See s. 569.21, F.S.

⁷ See ch. 2000-128, L.O.F.

⁸ Senate Staff Analysis and Economic Impact Statement for SPB 7066, prepared by the Regulated Industries Committee, January 17, 2006, at 4.

⁹ Chapter 2001-136, L.O.F.; codified in s. 569.215, F.S.

settlement payments pursuant to the tobacco settlement agreement is confidential and exempt¹⁰ from public records requirements. Furthermore, such information received by the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, or received by the Chief Financial Officer or the Auditor General for verifying annual settlement payments, is confidential and exempt.

Proprietary confidential business information means information that:

- Is owned or controlled by a tobacco company that is a signatory to the settlement agreement;
- Is intended to be and is treated by a tobacco company as private in that the disclosure of the information would cause harm to the company's business operations; and
- Has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.¹¹

Such information includes:

- Trade secrets.
- Information in a Form 10-K that is confidential pursuant to an order of the Division of Corporation Finance of the Securities and Exchange Commission.
- Internal auditing control policies and procedures and reports of internal auditors.
- Financial operating and marketing information that, if disclosed, could impair the competitive business interests of the provider.
- Financial statements.¹²
- Report letters from independent auditors relating to domestic operating company income.
- Analyses of specific items of revenue and expense included in operating profit and extraordinary items.¹³
- Working papers,¹⁴ schedules,¹⁵ analyses, and reconciliations¹⁶ prepared by company personnel for the purpose of clarifying the disclosures of domestic tobacco revenues and operating profit contained in financial statements or other information related to the sale or production of tobacco products.

Pursuant to the Open Government Sunset Review Act,¹⁷ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It clarifies that the exemption applies to trade secrets as defined in s. 688.002, F.S. The current exemption does not provide a definition for trade secrets. Finally, the bill makes editorial changes.

¹⁰ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹¹ Section 569.215(2), F.S.

¹² Financial statements consist of balance sheets, statements of income and cash flows, and notes related thereto, of any subsidiary that is part of a consolidated group and engaged in the production or sale of tobacco products. Section 569.215(2)(e), F.S.

¹³ Extraordinary items consist of one-time tobacco litigation settlement costs and restructuring charges. Section 569.215(2)(g), F.S.

¹⁴ According to tobacco company and agency responses to staff questionnaires, working papers are evidentiary materials used by accountants and auditors to document particular entries as debits/credits or income/expense. These documents include invoices, purchase orders, policies, and memoranda.

¹⁵ According to tobacco company and agency responses to staff questionnaires, a schedule is an attachment to working papers, analysis, and reconciliations. A schedule also has been described as a list of accounting entries, such as expense items.

¹⁶ According to tobacco company and agency responses to staff questionnaires, reconciliation is a comparison between two accounting documents, sets of information, or conclusions that were derived using different procedures.

¹⁷ Section 119.15, F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 569.215, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding the tobacco settlement
4 agreement; amending s. 569.215, F.S.; defining the term
5 "trade secrets" for purposes of the exemption; making
6 editorial changes; eliminating the scheduled repeal of the
7 exemption; providing an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Section 569.215, Florida Statutes, is amended to
12 read:

13 569.215 Confidential records relating to tobacco settlement
14 agreement.--

15 (1) Proprietary confidential business information received
16 by the Governor, the Attorney General, or outside counsel
17 representing the State of Florida in negotiations for settlement
18 payments pursuant to the settlement agreement, as amended, in the
19 case of State of Florida et al. v. American Tobacco Company et
20 al., No. 95-1466AH, in the Circuit Court of the Fifteenth
21 Judicial Circuit, in and for Palm Beach County, or received by
22 the Chief Financial Officer or the Auditor General for any
23 purpose relating to verifying settlement payments made pursuant
24 to the settlement agreement is confidential and exempt from ~~the~~
25 ~~provisions of~~ s. 119.07(1) and s. 24(a) of Art. I of the State
26 Constitution. Any state or federal agency that is authorized to
27 have access to such documents by any provision of law shall be
28 granted such access in furtherance of such agency's statutory
29 duties, notwithstanding the provisions of this section.

BILL

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Proprietary confidential business information received under this section shall not retain its confidential and exempt status if that information is made public, including publicizing such information in a Securities and Exchange Commission filing, an annual financial statement, or other document or means. ~~This exemption is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(2) As used in this section, the term "proprietary confidential business information" means information, regardless of form or characteristics, which is owned or controlled by a tobacco company that is a signatory to the settlement agreement, as amended, in the case of State of Florida et al. v. American Tobacco Company et al., No. 95-1466AH, in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, is intended to be and is treated by a tobacco company as private in that the disclosure of the information would cause harm to the company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. The term includes, but is not limited to:

(a) Trade secrets as defined in s. 688.002.

(b) Information in a Form 10-K that is confidential pursuant to an order of the Division of Corporation Finance of the Securities and Exchange Commission.

(c) Internal auditing control policies and procedures and reports of internal auditors.

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(d) Financial operating and marketing information prepared in the ordinary course of business, the disclosure of which could impair the competitive business of the provider of information.

(e) Financial statements, which consist of balance sheets, statements of income and cash flows, and notes related thereto, of any subsidiary that is part of a consolidated group and engaged in the production or sale of tobacco products.

(f) Report letters from independent auditors relating to domestic operating company income.

(g) Analyses of specific items of revenue and expense included in operating profit and extraordinary items. As used in this paragraph, the term "extraordinary items" consists of one-time tobacco litigation settlement costs and restructuring charges.

(h) Working papers, schedules, analyses, and reconciliations prepared by company personnel for the purpose of clarifying the disclosures of domestic tobacco revenues and operating profit contained in financial statements or other information related to the sale or production of tobacco products.

Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-21 OGSF Florida Surplus Lines Service Office
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1586

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Williamson <i>Raw</i>	Williamson <i>Raw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for information furnished to the Florida Surplus Lines Service Office under the Surplus Lines Law if disclosure would reveal information specific to a particular policy or policyholder. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

An insurance company that transacts insurance in Florida or that has an office located in the state is required to obtain a certificate of authority (COA) issued by the Office of Insurance Regulation.¹ Surplus lines insurers are an exception to the COA requirement.

Surplus lines insurance is coverage provided by a company that is not licensed in Florida but is allowed to transact insurance in the state as an eligible insurer. The purpose of the Surplus Lines Law² is to provide the public with access to insurers not authorized to transact business in Florida when certain insurance coverage cannot be obtained from Florida-authorized insurers.³ Insurance can be purchased from a surplus lines carrier only if the necessary amount of coverage cannot be procured after a diligent effort⁴ to buy the coverage from authorized insurers.

In 1997, the Legislature created the Florida Surplus Lines Service Office (office), a non-profit association designed to act as a self-regulating organization to permit better access by consumers to approved surplus lines insurers.⁵ A nine-person board of governors governs the office.⁶ The office must perform its functions under a plan of operation that is subject to approval by the Office of Insurance Regulation.⁷ The office must:⁸

- Receive, record, and review all surplus lines insurance policies;⁹
- Maintain a record of the policies reported to the office and prepare monthly reports;¹⁰
- Prepare and deliver to each surplus lines agent quarterly reports of each agent's business;¹¹
- Collect and remit to the Department of Financial Services (DFS) the surplus lines tax;¹²
- Reconcile policies provided by non-admitted insurers with the policies reported to the office by agents;¹³ and
- Collect monthly from each surplus lines agent a service fee of .25 percent.¹⁴

¹ Section 624.401, F.S.

² Sections 626.913 – 626.937, F.S.

³ Section 626.913(2), F.S.

⁴ A “diligent effort” means seeking coverage from and being rejected by at least three authorized insurers that write the type of coverage sought. The rejections must be documented. *See* s. 626.914(4), F.S.

⁵ Chapter 97-196, L.O.F.; codified as s. 626.921, F.S.

⁶ Section 626.921(4), F.S.

⁷ Section 626.921(5), F.S.

⁸ *See generally* subsections (3) and (6) of s. 626.921, F.S.

⁹ Section 626.921(3)(a), F.S.

¹⁰ Section 626.921(3)(b), F.S. Currently, the office must prepare a “Quasar” report that includes new business reported by agents, policy cancellations, and policy renewals. Senate Staff Analysis and Economic Impact Statement for SPB 7070 by the Banking and Insurance Committee, January 23, 2006, at 4.

¹¹ Section 626.921(3)(c), F.S.

¹² Section 626.932(2), F.S.

¹³ Section 626.921(3)(d), F.S.

¹⁴ The office may collect up to .3 percent of total gross premium. The fee pays for the cost of operating the office. It is paid by the insurer. *See* s. 626.921(3)(f), F.S.

Surplus lines agents (agents) handle the placement of insurance coverage with surplus lines insurers and place coverage with authorized insurers with whom the agent is not licensed.¹⁵ In order to place a business with a surplus lines carrier, the agent must make a diligent effort to place the policy with a Florida-authorized insurer.¹⁶ Agents are required to report and file with the office a copy of, or information on, each surplus lines insurance policy.¹⁷ Upon request by DFS or the office, agents must submit:

- An exact copy of any and all requested policies and other forms confirming insurance coverage¹⁸ along with any substitutions or endorsements;¹⁹ and
- The agent's memorandum as to the substance of any change represented by a substitute certificate, cover note, other form of confirmation of insurance coverage, or endorsement as compared with the coverage as originally placed or issued.²⁰

Current law provides a public records exemption for information furnished to DFS²¹ or the office,²² under the Surplus Lines Law, if it would reveal information specific to a particular policy or policyholder. The public records exemption no longer applies if DFS or the office institutes a proceeding against an agent or insurer. Pursuant to the Open Government Sunset Review Act,²³ the exemption afforded the office will repeal on October 2, 2006, unless reenacted by the Legislature.²⁴

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes.

C. SECTION DIRECTORY:

Section 1 amends s. 626.921, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a state expenditure.

¹⁵ Section 626.914(1), F.S.

¹⁶ Section 626.914(4), F.S.

¹⁷ Agents must submit specific information on each policy including the name of the insured and insurer, the policy number and its effective date, the policy's expiration date, the zip code and county where the covered risk is located, the type of coverage, the premium, effective date, and service fees. Section 626.921(2), F.S.

¹⁸ Such as applications, certificates, and cover notes.

¹⁹ Section 626.923, F.S.

²⁰ *Id.*

²¹ Section 626.921(8)(a), F.S.

²² Section 626.921(8)(b), F.S.

²³ Section 119.15, F.S.

²⁴ Section 626.921(8)(b), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may represent a minimal non-recurring positive impact on the Florida Surplus Lines Service Office expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, the office may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding the Florida Surplus Lines
Service Office; amending s. 626.921, F.S.; making
editorial changes; removing superfluous language;
eliminating the scheduled repeal of the exemption;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) of section 626.921, Florida
Statutes, is amended to read:

626.921 Florida Surplus Lines Service Office.--

(8)(a) Information furnished to the department under s.
626.923 or contained in ~~the~~ records subject to examination by the
department under s. 626.930 is confidential and exempt from ~~the~~
~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
Constitution if ~~the disclosure of the information~~ would reveal
information specific to a particular policy or policyholder. The
exemption does not apply to any proceeding instituted by the
department or office against an agent or insurer.

(b) Information furnished to the Florida Surplus Lines
Service Office under the Surplus Lines Law is confidential and
exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I
of the State Constitution if ~~the disclosure of the information~~
would reveal information specific to a particular policy or
policyholder. ~~This exemption does not prevent the disclosure of~~
~~any information by~~ The Florida Surplus Lines Service Office may
provide such information to the department in the furtherance of

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30 its duties and responsibilities , ~~but the exemption applies to~~
 31 ~~records obtained by the department from the Florida Surplus Lines~~
 32 ~~Service Office.~~ The exemption does not apply to any proceeding
 33 instituted by the department or office against an agent or
 34 insurer. ~~This paragraph is subject to the Open Government Sunset~~
 35 ~~Review Act of 1995 in accordance with s. 119.15, and shall stand~~
 36 ~~repealed on October 2, 2006, unless reviewed and saved from~~
 37 ~~repeal through reenactment by the Legislature.~~

38 Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-24 OGSR Alzheimer's Center and Research Institute
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Williamson <i>hau</i>	Williamson <i>hau</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida law establishes the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute (Alzheimer's Center) at the University of South Florida. The law requires the organization of a Florida not-for-profit corporation (corporation) for the sole purpose of governing and operating the Alzheimer's Center. Records of the corporation and its subsidiaries are public records.¹

Current law provides a public records exemption for the Alzheimer's Center.² The following information is confidential and exempt³ from public records requirements:

- Personal identifying information relating to program clients;
- Patient medical or health records;
- Materials that relate to methods of manufacture or production, potential trade secrets, potentially patentable material, actual trade secrets, or proprietary information received, generated, ascertained, or discovered during the course of research;
- Business transactions resulting from research;
- The identity of donors or prospective donors to the Alzheimer's Center who wishes to remain anonymous;
- Information received which is otherwise confidential and exempt; and
- Information received from a person from another state or nation or the Federal Government, which is confidential or exempt pursuant to those laws.

The Alzheimer's Center must provide such information to a governmental entity in the furtherance of that entity's duties and responsibilities. The governmental entity must maintain the confidential and exempt status of the information.

Pursuant to the Open Government Sunset Review Act,⁴ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes and removes superfluous language.

The bill removes the exemption for information received by the institute, which is otherwise confidential and exempt because it is unnecessary. In addition, it removes the provision requiring a governmental entity to maintain the confidential and exempt status of the information received. In *City of Riviera*

¹ Section 1004.445, F.S.

² Section 1004.445(9), F.S.

³ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁴ Section 119.15, F.S.

Beach v. Barfield,⁵ the court held that “when a criminal justice agency transfers exempt criminal investigative information to another criminal justice *agency*, the information retains its exempt status.”⁶ As such, the provision is unnecessary and has been removed.

C. SECTION DIRECTORY:

Section 1 amends s. 1004.445(9), F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, the state may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

⁵ 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995)

⁶ *Government-In-The-Sunshine Manual 2005 Edition*, prepared by the Office of the Attorney General and the First Amendment Foundation, vol. 27, at 118.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding the Alzheimer's Center and
Research Institute; amending s. 1004.445, F.S.; making
editorial changes; removing superfluous language;
eliminating the scheduled repeal of the exemption;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (9) of section 1004.445, Florida
Statutes, is amended to read:

1004.445 Johnnie B. Byrd, Sr., Alzheimer's Center and
Research Institute.--

(9) The following information is confidential and exempt
from ~~the provisions of~~ s. 119.07(1) and s. 24, Art. I of the
State Constitution:

(a) Personal identifying information relating to clients of
programs created or funded through the Johnnie B. Byrd, Sr.,
Alzheimer's Center and Research Institute which is held by the
institute, University of South Florida, or State Board of
Education ~~or by persons who provide services to clients of~~
~~programs created or funded through contracts with the Johnnie B.~~
~~Byrd, Sr., Alzheimer's Center and Research Institute;~~

(b) ~~Any~~ Medical or health records relating to patients held
~~which may be created or received~~ by the institute;

(c) Materials that relate to methods of manufacture or
production, potential trade secrets, potentially patentable
material, actual trade secrets as defined in s. 688.002, or

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proprietary information received, generated, ascertained, or discovered during the course of research conducted by or through the institute and business transactions resulting from such research;

(d) The personal identifying information ~~The identity~~ of a donor or prospective donor to the ~~Johnnie B. Byrd, Sr., Alzheimer's Center and Research~~ institute who wishes to remain anonymous, ~~and all information identifying such donor or prospective donor; and~~

(e) ~~Any information received by the institute in the performance of its duties and responsibilities which is otherwise confidential and exempt by law; and~~

(f) Any information received by the institute from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state ~~state's~~ or nation ~~nation's~~ laws or pursuant to federal law.

Any governmental entity that demonstrates a need to access such confidential and exempt information in order to perform its duties and responsibilities shall have access to such information ~~and shall otherwise keep such information confidential and exempt. This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2006.